

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

JOAQUÍN CARCAÑO, *et al.*,

Plaintiffs,

v.

ROY A. COOPER, III, *et al.*,

Defendants,

and

PHIL BERGER, *et al.*,

Intervenor-Defendants.

No. 1:16-cv-00236-TDS-JEP

**PLAINTIFFS’ AND EXECUTIVE BRANCH DEFENDANTS’
SUPPLEMENTAL JOINT MOTION FOR ENTRY OF A CONSENT DECREE**

NOW COME Plaintiffs Joaquín Carcaño, Payton Grey McGarry, Hunter Schafer, Quinton Harper, Angela Gilmore, Madeline Goss, and American Civil Liberties Union of North Carolina (collectively, “Plaintiffs”); and Defendants Roy A. Cooper III, Joshua Stein, Machel Sanders, Mandy K. Cohen, and James H. Trogdon III (collectively, “Executive Branch Defendants”) (Plaintiffs and Executive Branch Defendants are collectively referred to herein as “the Parties”), by and through their attorneys, and move the Court pursuant to Local Rule 7.1 for entry of a Consent Judgment and Decree, filed concurrently with this motion. In support thereof the Parties state as follows:

1. On September 7, 2017, Plaintiffs filed their Fourth Amended Complaint, seeking declaratory and injunctive relief and nominal damages (D.E. 210), alleging that Plaintiffs are entitled to relief from this Court for violations of their rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution, pursuant to 42 U.S.C. § 1983; Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, *et seq.*; and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*

2. After Plaintiffs moved the Court, with consent of all parties, to file their Fourth Amended Complaint, Plaintiffs and the Executive Branch Defendants engaged in substantial good faith negotiations about a potential settlement of Plaintiffs' claims against the Executive Branch Defendants.

3. Following those negotiations, on October 18, 2017, the Parties requested that the Court enter a Consent Judgment and Decree, filed concurrently with a joint motion, to resolve all of Plaintiffs' claims against the Executive Branch Defendants. The Court additionally permitted the Executive Branch Defendants to answer or file other responsive pleadings to the Plaintiffs' Fourth Amended Complaint, if applicable, 30 days after the court's disposition of the joint motion for entry of a consent decree. (D.E. 226).

4. In the interim, Intervenor-Defendants and the UNC Defendants in this proceeding filed motions to dismiss the Fourth Amended Complaint. (D.E. 221, 222). The Court determined to "defer consideration of the proposed consent decree until the various Defendants' pending challenges to the court's jurisdiction are resolved" (D.E.

226), and extended the time to file responses to the original Joint Motion for Entry of a Consent Decree until after the Court's disposition of the motions to dismiss. (D.E. 228).

5. On September 30, 2018, the Court granted in part and denied in part the Intervenor-Defendants' and the UNC Defendants' motions to dismiss. (D.E. 248). In its order, the Court ordered the parties to submit additional briefing concerning the Joint Motion for Entry of a Consent Decree. (*Id.*).

6. Following the Court's order resolving the Intervenor-Defendants' and the UNC Defendants' motions to dismiss, and informed by that decision, Plaintiffs and the Executive Branch Defendants again engaged in extensive negotiations concerning the possibility of modifying a consent decree to settle all of Plaintiffs' claims against the Executive Branch Defendants.

7. On December 21, 2018, Plaintiffs and the Executive Branch Defendants filed a Joint Motion for Entry of a Consent Decree, which was the culmination of those negotiations. (D.E. 264). Intervenor-Defendants opposed that motion. (D.E. 271).

8. On May 17, 2019, the Court held a hearing on the Joint Motion for Entry of a Consent Decree and thereafter ordered the parties to "meet and confer and file a proposed consent decree addressing the court's and parties' concerns expressed during the hearing." (D.E. 286 at 1-2).

9. All parties have engaged in further negotiation in accordance with the Court's order and with the goal of addressing concerns raised by the Court and by the Intervenor-Defendants. Those negotiations resulted in Plaintiffs and the Executive Branch Defendants agreeing to revise the proposed Consent Judgment and Decree, a redline of

which has been filed contemporaneously with this motion. Intervenor continue to object to entry of the revised proposed Consent Judgment and Decree. The UNC Defendants take no position as to this motion.

10. The modified proposed Consent Decree provides that, with respect to public facilities that are subject to the Executive Branch Defendants' control or supervision, Plaintiffs and Executive Branch Defendants agree that nothing in House Bill 142, codified as Session Law 2017-4 ("H.B. 142"), can be construed to prevent transgender people from lawfully using public facilities in accordance with their gender identity. *See* Consent Judgment and Decree at 5 ¶ 1.

11. The modified proposed Consent Decree also permanently enjoins the Executive Branch Defendants, in their official capacities, and all successors, officers, and employees, from taking certain specified actions under Section 2 of H.B. 142. *See* Consent Judgment and Decree at 6 ¶ 2.

13. Pursuant to the modified proposed Consent Decree, the Parties agree to each bear their own fees, expenses, and costs with respect to all claims raised by Plaintiffs against the Executive Branch Defendants, and all remaining claims Plaintiffs allege against the Executive Branch Defendants in this action would be dismissed with prejudice. *See* Consent Judgment and Decree at 6 ¶¶ 4-5.

14. In support of this motion, the Parties submit respective memoranda of law, addressing the Court's concerns and how the modified proposed Consent Decree resolves them.

WHEREFORE, for the foregoing reasons, and for those set forth in the Parties' earlier briefing and supplemental supporting memoranda of law, the Parties respectfully move the Court to enter the Consent Judgment and Decree, filed concurrently with this joint motion, as a full and final resolution of Plaintiffs' claims against the Executive Branch Defendants.

Dated: May 31, 2019

Respectfully submitted,

/s/ Irena Como

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*Appearing by special appearance pursuant to L.R. 83.1(d).

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Counsel for Defendants GOV. ROY A. COOPER, III, in his Official Capacity as Governor of North Carolina, JOSHUA H. STEIN, in his official capacity as Attorney General of North Carolina; MACHELLE SANDERS, in her official capacity as Secretary of the North Carolina Department of Administration; MANDY K. COHEN, in her official capacity as Secretary of the North Carolina Department of Health and Human Services; and JAMES H. TROGDON III, in his official capacity as Secretary of the North Carolina Department of Transportation.

CERTIFICATE OF SERVICE

I, Irena Como, hereby certify that on May 31, 2018, I electronically filed the foregoing PLAINTIFFS' AND EXECUTIVE BRANCH DEFENDANTS' SUPPLEMENTAL JOINT MOTION FOR ENTRY OF A CONSENT DECREE, as well as Plaintiffs' Memorandum of Law in support of the Consent Judgment and Decree, Proposed Consent Judgment and Decree, and a redline of that Proposed Consent Judgment and Decree identifying all changes made using the CM/ECF system, and have verified that such filing was sent electronically using the CM/ECF system to all parties who have appeared with an email address of record.

/s/ Irena Como

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